**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**FIRST APPEAL No. 1964 of 1982**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE KS JHAVERI**

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**G S R T C - Appellant(s)**
**Versus**
**KARSANJI RAMJI(HEIRS OF BAI JIVUBAI KARSANJI & 6 - Defendant(s)**

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**Appearance :**
MR MD PANDYA for Appellant(s) : 1,
MR MANOJ N POPAT for Defendant(s) : 1 - 6.
- for Defendant(s) : 7,

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**CORAM : HONOURABLE MR.JUSTICE KS JHAVERI**

**Date : 28/07/2006**

**ORAL JUDGMENT**

1.0 By way of this appeal, the appellant has challenged the judgment and award of the Motor Accident Claims Tribunal (Main), Junagadh passed in M.A.C.P. No.9 of 1980 dated 18.03.1982.

2.0 The brief facts of the case are that on 19.11.1979, when the deceased Bai Jivibai was traveling in a bus driven by present opponent

No.7 and owned by the present appellant, the said bus collided with a rickshaw. On account of that she received serious bodily injuries. Therefore she filed a claim petition dated 10.01.1980. However, during the pendency of the said claim petition she died. Therefore, her heirs and legal representatives preferred an application dated 27.03.1981 claiming an amount of Rs.1,00,000/- by way of compensation which was came to be allowed on 04.07.1981. The Tribunal, thereafter, decided the original claim petition filed by the deceased Bai Jivibai, by passing the impugned judgment and award.

3.0 Learned Advocate for the appellant has submitted that the Tribunal ought to have held that original cause of action for such a proceeding died with the death of original claimant. He has further submitted that the Tribunal has committed an error by drawing incorrect inference from the facts proved.

4.0 On the other hand, learned Advocate for the opponent Nos. 1 to 6 has supported the order of the Tribunal and has contended that the impugned order has been passed by the Tribunal after taking into consideration all the facts and circumstances of the case, and hence, the present appeal deserves to be dismissed.

5.0 Heard learned Advocate for the appellant as well as learned Advocate for opponent Nos. 1 to 6. Though, severed none appears on behalf of the opponent No.7. The opponent No.7 in his deposition (Exh.62) has stated that on the relevant date he was driving the bus involved in the accident in question and when he saw an auto-rickshaw and a car coming from the opposite direction, he tried to apply the brakes to avert any accident. However, the brakes did not work and the accident in question took place. There is no evidence produced on record to directly show that all the possible care was taken by the opponent No.7 to avert accident in question.

Even if the case of the opponent No.7 is accepted, it was expected from him to be fully conversant with the functioning of such a vital part of the vehicle i.e. brakes. Hence, it can be said that the accident in question took place on account of the negligence and carelessness on the part of opponent No.7.

5.1 By passing the impugned judgment and award the Tribunal awarded Rs.75,000/- with proportionate costs and interest at the rate of 6 per cent Here, it may be noted that in the original claim petition filed by the deceased Bai Jivibai no claim amount was specified by her. Hence, it appears that the Tribunal has committed an error in proceeding with the application of the heirs and legal representatives of the deceased Bai Jivibai. Therefore, contention of the learned Advocate for the appellant that the Tribunal ought not to have proceeded with claim petition requires to be accepted. The appellants have produced bills of about Rs.24,000/- towards

medical expenses. I am, therefore, of the opinion that the ends of the justice would met by awarding an amount of Rs.24,000/- towards the medical expenses and Rs.1,000/- towards obsequious expenses.

6.0 In the result, the appeal is partly allowed. The opponent Nos. 1 to 6 shall be entitled for an amount of Rs.25,000/- towards compensation. The remaining amount, if not withdrawn by the opponent Nos.1 to 6, shall be refunded to the appellant. The judgment and award of the Motor Accident Claims Tribunal (Main), Junagadh passed in M.A.C.P. No.9 of 1980 dated 18.03.1982 is modified to the aforesaid extent. Rest of the judgment and award is confirmed. No order as to costs.

(K.S. Jhaveri,J.)

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